

ACT 23

S.B. NO. 886

A Bill for an Act Relating to Business Registration.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 414-402, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) If a corporation’s period of duration specified in its articles of incorporation has expired, the corporation ~~[may continue]~~ continues its corporate existence but may not carry on any business except ~~[as]~~ that necessary to wind up and liquidate its business and affairs under section 414-385 and notify claimants under sections 414-386 and 414-387.”

SECTION 2. Section 414-403, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Within the applicable reinstatement period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited partnership, limited liability company, or limited liability partnership, or should the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the ~~[involuntarily]~~ administratively dissolved corporation pursuant to the amendment provisions of this chapter.”

SECTION 3. Section 414D-14, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.”

SECTION 4. Section 414D-15, Hawaii Revised Statutes, is amended to read as follows:

“§414D-15 Notice. (a) Notice may be oral or written.

(b) Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by¹ newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.

(c) Oral notice is effective when communicated if communicated in a comprehensible manner.

(d) Written notice by a domestic or foreign corporation to its members, if in a comprehensible form, shall be effective when mailed, if mailed postpaid and correctly addressed to the member’s address shown in the corporation’s current record of members.

(e) Except as provided in subsection (d), written notice, if in a comprehensible form, is effective at the earliest of the following:

- (1) When received;
- (2) Five days after its deposit with the United States Postal Service, as evidenced by the postmark; provided the notice is mailed with the correct address and with first class postage affixed; or

- (3) On the date shown on the return receipt; if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member's last known address shown in the corporation's current list of members.

(g) A written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's last known address shown in the corporation's current list of members, or in the case of members who are residents of the same household and who have the same address in the corporation's current list of members, if addressed or delivered to one of the members, at the last known address appearing on the current list of members.

(h) Written notice is correctly addressed to a domestic or foreign corporation (authorized to transact business in the State), other than in its capacity as a member, if addressed to its registered agent or to its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(i) Without limiting the manner by which notice otherwise may be given to members, notice to members given by the corporation under this chapter, the articles of incorporation, or the bylaws shall be effective if provided by electronic transmission consented to by the member to whom the notice is given. Any consent shall be revocable by the member by written notice to the corporation. Any consent shall be deemed revoked if:

- (1) The corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent; and
- (2) The inability to deliver becomes known to the secretary or an assistant secretary of the corporation, to the transfer agent, or other person responsible for giving notice; provided that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(j) Notice given pursuant to subsection (i) shall be deemed given:

- (1) If by facsimile telecommunication, when directed to a number at which the member has consented to receive notice;
- (2) If by electronic mail, when directed to an electronic mail address at which the member has consented to receive notice;
- (3) If by posting on an electronic network together with separate notice to the member of such specific posting, upon the later of the posting and the giving of such separate notice; and
- (4) If by any other form of electronic transmission, when directed to the member.

An affidavit of the secretary, assistant secretary, transfer agent, or other agent of the corporation that the notice has been given by a form of electronic transmission, in the absence of fraud, shall be prima facie evidence of the facts stated therein.

[~~(h)~~] (k) If section 414D-105(b) or any other provision of this chapter prescribes notice requirements for particular circumstances, those requirements shall govern. If articles or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements shall govern."

SECTION 5. Section 414D-249, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) If a corporation’s period of duration specified in its articles of incorporation has expired, the corporation ~~[may continue]~~ continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its business and affairs under section 414D-245 and notify claimants under sections 414D-246 and 414D-247.”

SECTION 6. Section 414D-250, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Within the applicable reinstatement period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited partnership, limited liability company, or limited liability partnership, or should the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the ~~[involuntarily]~~ administratively dissolved corporation pursuant to the amendment provisions of this chapter.”

SECTION 7. Section 415A-16.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The articles of conversion shall be delivered to the director. The converted entity, if a domestic corporation, domestic professional corporation, domestic nonprofit corporation, ~~[foreign corporation,]~~ general partnership, limited partnership, or domestic limited liability company, shall attach a copy of its respective registration documents with the articles of conversion.”

SECTION 8. Section 415A-18, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

“(c) A professional corporation that is administratively dissolved ~~[may continue]~~ continues its corporate existence but may not carry on any business except ~~[as]~~ that necessary to wind up and liquidate its business and affairs under section 414-385 and notify claimants under sections 414-386 and 414-387.”

2. By amending subsection (f) to read:

“(f) If a professional corporation’s period of duration specified in its articles of incorporation has expired, the professional corporation ~~[may continue]~~ continues its corporate existence but may not carry on any business except ~~[as]~~ that necessary to wind up and liquidate its business and affairs under section 414-385 and notify claimants under sections 414-386 and 414-387.”

SECTION 9. Section 425-14, Hawaii Revised Statutes, is amended to read as follows:

“**§425-14 Cancellation of registration.** (a) The director may commence a proceeding to cancel the registration of a domestic or foreign general partnership if the partnership fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual statement for a period of two years;
- (3) Appoint and maintain an agent for service of process as required;
- or
- (4) File a statement of a change in the name or business address of the agent as required under this chapter.

The cancellation of such registration or certificate shall not relieve the partners of liability for the penalties for the failure to file any statement or certificates required by this part.

(b) Within two years after the administrative cancellation of a domestic general partnership under this section, the registration statement of the domestic general partnership may be reinstated by the director upon written application executed by any partner of the domestic general partnership. The application shall:

- (1) Recite the name of the domestic general partnership and the effective date of its administrative cancellation;
- (2) Contain all statements due and unfiled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate from the department of taxation indicating that all taxes owed by the domestic general partnership have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.

(c) Within the applicable reinstatement period, should the name of the domestic general partnership, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited partnership, limited liability company, or limited liability partnership, or should such name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the [~~involuntarily~~] administratively canceled domestic general partnership pursuant to the amendment provisions of this chapter.

(d) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the [~~involuntary~~] administrative cancellation and the domestic general partnership may resume its business as if the [~~involuntary~~] administrative cancellation had never occurred."

SECTION 10. Section 425-164, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(c) A partnership whose statement of qualification [~~or statement of foreign qualification~~] has been administratively revoked may apply to the director for reinstatement within two years after the effective date of the revocation. The application shall:

- (1) Recite the name of the partnership and the effective date of the revocation;
- (2) Contain all reports due and unfiled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate from the department of taxation indicating that all taxes owed by the partnership have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.

(d) A reinstatement under subsection (c) shall relate back to and take effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership [~~or foreign limited liability partnership~~] shall continue upon reinstatement as if the revocation had never occurred."

SECTION 11. Section 425-193, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The converted entity, if a domestic corporation, domestic professional corporation, [~~foreign corporation,~~] domestic nonprofit corporation,

general partnership, limited partnership, or domestic limited liability company shall attach a copy of its respective registration documents with the articles of conversion.”

SECTION 12. Section 425E-1103, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The converted entity, if a domestic corporation, domestic professional corporation, ~~[foreign corporation,]~~ domestic nonprofit corporation, domestic general partnership, domestic limited partnership, or domestic limited liability company shall attach a copy of its respective registration documents to the articles of conversion.”

SECTION 13. Section 428-902.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The articles of conversion shall be delivered to the director. The converted entity, if a domestic corporation, domestic professional corporation, ~~[foreign corporation,]~~ domestic nonprofit corporation, general partnership, limited partnership, or domestic limited liability company shall attach a copy of its respective registration documents with the articles of conversion.”

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 15. This Act shall take effect on July 1, 2009.

(Approved April 29, 2009.)

Note

1. Prior to amendment “a” appeared here.